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PART II—Section 3

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No. 181] NEW DELHI, TUESDAY, DECEMBER 30, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 30th December 1952

S.R.O. 2130.—WHEREAS the election of Shri Dumba Sabar of Godiabandha, District Koraput, as a member of the Legislative Assembly of Orissa, from Gunpur Assembly constituency has been called in question by an Election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ram Murti son of Jagana of Nilangula, Gunpur, District Koraput;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, GANJAM-NAYAGARH,
BERHAMPUR (ORISSA)

PRESENT:

Shri Dwarikanath Das, B.A., B.L., *Chairman.*

Sri G. Krishnamurti, M.A., B.L., and Sri R. K. Ratho, M.A., B.L.—*Members.*

ELECTION CASE OF No. 1 OF 1952

The 22nd day of December, 1952

Ram Murti, son of Jagana of Nilangula, Gunpur, Dt. Koraput.—*Applicant.*

Versus

1. Sri Dumba Sadar of Godiabandha, Dt. Koraput.

2. Mangal Gamang of Marichaguda, P.O. Padmapur.

3. Bairu Gamang of Kujendri, P.O. Kujendri, Dt. Koraput.—*Respondents.*

Shri G. Narayanamurti and Shri P. V. Kameswar Rao, Advocates for the petitioner.

Shri R. D. D. Jagannath Rao, Pleader for respondent No. 1.

Shri Hemachandra Patnalk, Pleader for respondent No. 3.

JUDGMENT

This is an Election Petition filed under Section 81 of the Representation of the People Act, 1951. The petitioner avers that he was a duly nominated candidate along with three other such candidates, who are respondents for the State Legislative Assembly, Orissa. The nomination of Respondent No. 3 was rejected by the Returning Officer on scrutiny and there remained the petitioner and respondents 1 and 2 to contest the election. The result of the election was published under Section 67 of the Act on 21st January 1952 and respondent No. 1 was declared elected from the Gunpur Scheduled Tribes Constituency for which the parties were the contestants. Respondent No. 1 was "holding an office of profit" on 10th November 1951 the date of nomination, being a teacher in the Government Kujendri Ashram School Koraput, the holder whereof has not been exempted from disqualification by the State Legislature, and as such, was disqualified to be chosen as a member under Article 191 of the Indian Constitution. Respondent No. 1 sent a telegram to the Secretariat, Cuttack, for being relieved from service to enable him to file his nomination paper. But as a matter of fact, at the time of filing the nomination paper he had not been relieved from Government service and was on leave. His nomination paper has thus been improperly accepted and the result of the election has been materially affected by such improper acceptance. It is also alleged that respondent No. 1, by continuing in service between the date of filing of the nomination paper and the date of actual polling has influenced the parents of the pupils of the Ashram School to vote for him and thus has obtained the undue advantage of influencing the voters in his favour. Hence, Respondent No. 1's election be declared void as provided under Section 98 of the Act.

2. The respondent No. 1, who is the sole contesting respondent, admits that he was a teacher in the Ashram school but by the time he filed the nomination paper, he was free from that disqualification and did not hold any office of profit or any post disqualifying him from being chosen as a member to the Orissa Legislative Assembly. The respondent does not admit that he was on leave when he filed his nomination paper but pleads that before filing the nomination paper, he had tendered unqualified resignation and ceased to hold any post in the said Ashram School. He contends that the nomination paper was properly accepted and the result of the election has not been materially affected by improper acceptance of the said nomination paper as alleged. It is also said that the ineligibility for the membership on the ground urged in the petition cannot be tried as an issue in this Election petition. He further stated that he has not influenced the parents of the pupils of the school.

3. On the pleadings, the following issues were framed:—

- (1) Whether respondent No. 1 held an office of profit as contemplated by Article 191 of the Constitution on the date of nomination on 10th November 1951 and as such disqualified for being chosen as a candidate for Election to Gunpur Scheduled Tribes Constituency of the Legislative Assembly, Orissa?
- (2) Whether the question of eligibility of the respondent No. 1 to stand for the Election can be questioned in this proceeding?
- (3) Whether respondent No. 1 used his position as a school teacher to influence the parents of his pupils at various times to secure votes and canvass for him?
- (4) Whether the election of respondent No. 1 as a Member of the Orissa Legislative Assembly is void or the entire Election is void?
- (5) To what relief, if any, is the petitioner entitled?

4. *Issue No. 2.*—The technical objection raised under this issue is that the Tribunal has no power to go into the question of such a disqualification. That is, such a disqualification for membership is a question which has got to be decided by the Governor as provided under Article 192 of the Constitution and not by the Tribunal formed under the Representation of the People Act. To apply Article 192 to this case, the respondent's lawyer wants to read a few more words into the said Article to include cases of persons who are disqualified for being chosen as members. Article 192 says that when a question arises as to whether a member of a House of Legislature has become subject to any of the disqualifications mentioned in Cl. (1) of Article 191, the question shall be referred to the Governor for decision. That is, Article 192 would only apply to cases of the disqualifications enumerated in Article 191(1) which have arisen subsequent to one becoming a member of the legislature after election. The wording of Article 192 is thus clear to exclude persons who are

disqualified for being chosen as members. As it appears, the case of a person disqualified for being chosen as a member on any one of the grounds enumerated in Article 191 can be dealt with at the initial stage by the Returning Officer under Section 36(2) or under Section 7 of the Representation of the People Act or after election by the Tribunal under Section 100 and 101 of the said Act after the constitution of a Tribunal under Section 86 of the Act. The stage of rejection of nomination paper at the time of scrutiny has already passed and at the trial of an election petition the Tribunal can go into the question of eligibility on the ground that the candidate was disqualified for being chosen as a member. Section 100 Cl. 1 sub-clause (c) lays down improper acceptance or rejection of nomination paper as one of the grounds for declaring the election void and it is this provision in the Act which is to be looked to for the necessary relief on that score. Reading Article 192 of the Constitution, as it is worded and no reason having been shown to the Tribunal to read a few more words into the said Article and include cases of disqualification for being chosen as members, the objection of respondent No. 1 that the Tribunal has no jurisdiction to consider the question of eligibility for membership is overruled and we hold that the Tribunal has jurisdiction to go into that question.

5. *Issue No. 1.*—It is not disputed that the post which the respondent No. 1 held in the Ashram School was an office of profit as contemplated by Art. 191 of the Constitution. It is also conceded that the Orissa Offices of Profit Act, 1951, has not removed the disqualification arising out of the holding of the office of the teacher, Ashram School, Kujendri, which the respondent held at the time of nomination. The respondent's contention is that before the date of nomination, he had tendered unqualified resignation and ceased to hold any post in the Ashram School. The petitioner on the other hand has come with the allegation that respondent No. 1 had simply applied to the District Welfare officer and had sent telegrams to the Secretariat, Cuttack, for being relieved from service to enable him to file nomination paper as a matter of fact, he was not relieved from Government service but had ceased to attend the school of his own accord since 7th November, 1951 and at the time the nomination paper was filed. At the trial it has been shown by the petitioner that the post of Agricultural Instructor, Ashram School, Kujendri, as held by respondent No. 1, was sanctioned by the State Government of Orissa and the contribution to the said school was from the State Revenue—vide order of sanction Ex. 2 and the entry in the Civil Budget, Ex. 1. The respondent's appointment as agricultural teacher was on his own application—vide application Ex. 3, the order of appointment Ex. 4 and the joining report Ex. 5. Ex. 6 and 6-a are the two telegrams sent by the respondent No. 1 to the Director, Rural Welfare, Cuttack (as the Secretary of the Department then was called) on 18th October, 1951 and 5th November, 1951 respectively. They show respondent No. 1's continuing in the post of the Agricultural Instructor, Ashram School, Kujendri, till the date to which the telegrams relate. The material date is 10th November, 1951 and it is to be seen if by that date, the respondent still continued in Government service holding the post of the Agricultural Instructor. After receipt of the respondent's telegram Ex. 6, dated 18th October, 1951, the Under Secretary, Tribal and Rural Welfare Department (P.W.1) sent the letter Ex. 7 dated 24th October, 1951 addressed to the District Welfare Officer, Koraput, who was the District Head of the Ashram School at Kujendri. Though the telegram Ex. 6 was sent tendering resignation of the job by the respondent on 18th October, 1951 and the application Ex. 9 to that effect was submitted to the District Welfare Officer on 19th October, 1951, the letter Ex. 7 was sent by the Under Secretary, Rural Welfare Department for the information of the respondent that he cannot be relieved unless a substitute was available to relieve him. On 6th November, 1951, the respondent applied for one month's medical leave to the District Welfare Officer with effect from 1st November, 1951 attaching a Medical Certificate—vide application Ex. 8-b and the Medical Certificate Ex. 8-c. On 7th November, 1951 he submitted another application Ex. 9-a, dated 7th November, 1951 to the District Welfare Officer with copy to the Director, Rural Welfare. Stating therein that he ceased himself from his duties from that day and the resignation already tendered may be accepted and orders issued to that effect. There was no acceptance of resignation as prayed for in the two telegrams Exs. 6 and 6-a sent to the Director and finally on 10th November, 1951 at 3-15 P.M. the respondent sent the last telegram Ex. 6-b to the Rural Welfare Director seeking confirmation of the resignation tendered from before. That telegram Ex. 6-b too did not produce the desired effect and it is on 14th January, 1952 the application for resignation was acted upon and from that date, a substitute was taken in place of the respondent in the post. The respondent having ceased to work as the teacher in the Ashram School with effect from 7th November, 1951, he was placed under suspension

from that date as per the order of the then District Welfare Officer dated 12th December, 1951 Ex. 12. Thus from the sequence of dates given above, it would appear that the resignation as tendered by the respondent on 18th October, 1951 by telegram and on 19th October, 1951 by regular application was not considered till 14th January, 1952, and in the meantime the respondent first applied for medical leave for one month with effect from 1st November 1951, and then ceased himself from duties from 7th November 1951. Besides acknowledging himself as a servant under the Government by sending an application for medical leave, the respondent in his first application Ex. 9 addressed to the District Welfare Officer on 19th October, 1951 has clearly stated that he would give up service subject to the acceptance of his resignation by the department. In the second application addressed to the District Welfare Officer on 7th November, 1951 (Ex. 9-a) the respondent similarly has expressed himself in the matter of resignation where he has prayed that the resignation already tendered may be accepted and orders issued to that effect if not already done. The telegram Ex. 6-b dated 10th November, 1951 is also sufficiently indicative of the fact that the respondent wanted acceptance of resignation by the authorities prior to his taking part in the election and till such acceptance he did not consider himself free. In connection with the telegram Ex. 6-b, it is seen that it was evidently despatched after the hour fixed for the filing of nomination paper and that only shows how anxious the respondent was to free himself from Government service which he knew to be a barrier to his candidature. On a consideration of the series of correspondence including the telegrams there need be little hesitation to say that at the time of filing of the nomination paper on 10th November, 1951, the respondent No. 1 still continued in the service of the Government in Orissa State. The point material for consideration now is if the submission of resignation by the respondent even without its acceptance by the authorities tantamounts to cessation of service. Art. 310 of the Indian Constitution is that except as expressly provided by the Constitution, every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor. If a person is to hold the office during pleasure of the Governor or the Union as the case may be, it is impossible to think that the person holding the office shall hold it at his pleasure. The respondent No. 1 as the holder of a post under the State was therefore not free to cease the service at his pleasure so long he held the post under the State. The contention of the respondent's lawyer is that it is the intention to resign which is material and from the moment the respondent thought of resigning service and sent a wire tendering resignation of the service, he shall be deemed as free from the service of the State. For this contention of his, he refers to the Bengal Marwari Association case, reported in Doabia's Election Cases, 1864-1935, Vol. I, page 186. In the above case, the Joint Secretary of the Marwari Association was made the Returning Officer and the respondent, Babu Rangalal Jajodia was the Joint Secretary of the Marwari Association. 8th October, 1923 was fixed as the date fixed for nomination of the candidates and 11th October as the date for scrutiny. On the 7th October, Babu Rangalal Jajodia resigned his office as Joint Secretary and sent a telegram to the Government of Bengal resigning his office as Returning Officer. On the 8th October there were only two candidates, the petitioner and the respondent Babu Rangalal Jajodia. The election of Babu Rangalal Jajodia being challenged by the petitioner who was the only other contesting candidate on the ground that he continued as Joint Secretary and Returning Officer even on 8th October, it was held that there was nothing in the rules of the Marwari Association which prevented the respondent from resigning his office as Joint Secretary and further held that the appointment of the Returning Officer was not by name but by virtue of the office. In the result, Babu Rangalal Jajodia was held to have ceased to be the Returning Officer after the 7th October. This case has got to be distinguished from the facts of the present case. As stated above, the respondent held service under the State during the pleasure of the Governor and not at his pleasure. Further, the respondent's lawyer has not been able to refer to any Service Rule of the Government which gives the Government servant the right to tender unilateral resignation and to consider himself free from Government Service. Next, reference is made to "Rogers on Election" Vol. II (20th Edn.) at page 21 for the interpretation of the word "resignation". There are two English cases *Aborbrothock* 6th December, (1748) and *Lanarkshire* (1775), 2 Dougl. 367. Referring to the above two English Cases, it is sought to be said that acceptance of resignation is to be implied. To meet the two English Cases above cited, the petitioner's learned advocate refers to the case reported in 45 Madras Law Journal Report, page 798 where the two English Cases have been referred to and discussed. In 45 M.L.J. Report 798 at page 799, his Lordship Justice Ramesam while holding that resignation without acceptance is not suffi-

cient has observed that in the Lanarkshire Case, resignation was accepted though informally before the election while in the other case, the facts were not fully stated to know if the resignation was or was not accepted before the election. Referring to the interpretation put on the Lanarkshire Case, the respondent's lawyer further argues that implied acceptance is sufficient and here such acceptance is evidenced by the letter Ex. 7 sent by P.W.1, the Under Secretary of the Rural Welfare Department to the District Welfare Officer, Koraput. In Ex. 7, there is nothing to indicate that there was informal acceptance of the resignation. All that the Under Secretary has written for the information of the respondent is that he can be relieved only when a substitute reaches the school to relieve him and not otherwise. Thus, the respondent's lawyer has not been able to show that mere sending of resignation is sufficient to relieve the respondent from the service before the date of nomination. On the petitioner's side, the first submission made on the point of law is that the respondent was placed under suspension from 7th November 1951 i.e., three days before the date of nomination as evidenced by letter Ex. 12 and suspension only proves the continuity of the contract of service between the employer and the employee. For this view of his, the learned advocate refers to A.I.R. 1942 Patna, page 452 where it is held that suspension of an employee does not amount to dismissal or termination of the contract of service. On the point of resignation, two decisions were cited by the petitioner's advocate and they are reported in 47 M.L.J. page 774 and 45 M.L.J. at page 798. In both the cases, an Honorary Magistrate who is disqualified for election as a member of the Local Board under Section 55(2)(d) of the Madras Local Boards Act merely submitted his resignation to the Government and stood for the election. It was held that the Honorary Magistrate cannot relieve himself of that disqualification by merely submitting a resignation to the Government; the disqualification subsists until Government accept the same. Section 55 Cl. (2) Sub-Cl. (d) of the Madras Local Boards Act having disqualified an Honorary Magistrate for election as a member of a local Board and acceptance of his resignation by the Government being a necessary feature, the two cases stand as good authority for the position that resignation by a Government servant to be complete must be followed by acceptance by the Government. The case reported in 1943 Madras Law Journal at page 658 is also cited by the petitioner's lawyer to urge that unilateral action of abandonment of employment is not sufficient. In this case, an Assistant Public Prosecutor sent his resignation to the Government and thereafter did nothing in connection with his office and left the District. The cases still pending in the hand of the Assistant Public Prosecutor were made over to another gentleman and he was relieved from the work of conducting such cases. The point that arose was whether the Assistant Public Prosecutor's action amounted to resignation of his office or it was an abandonment of employment punishable under section 5(b) read with Section 7(1) of the Essential Services (Maintenance) Ordinance of 1941. It was held that the mere fact that the Assistant Public Prosecutor was relieved from the work of conducting the few pending cases could not be reasonably taken to indicate that his resignation was accepted and it was a case of abandonment of employment punishable under section 5(b) of the Ordinance. The above decision may also be cited as an authority for the position advanced on behalf of the petitioner. For the reasons stated above, we hold that the resignation tendered by the respondent was not a valid resignation, the same not having been accepted on the date of nomination and as such, the respondent was disqualified from being chosen as a candidate for election to the Scheduled Tribes Constituency of Gunpur.

6. *Issue No. 3.*—This is a case where the result of the election is alleged to have been materially affected by the improper acceptance of a nomination paper. The allegation that respondent No. 1 used his position as a school teacher to influence the parents of his pupils has therefore no bearing on the material point at issue. The petitioner's advocate at the time of argument also conceded that he does not charge the respondent with anyone of the corrupt practices referred to in Sec. 123 of the Act. The fact that the respondent was a teacher in the Ashram School on the date of the nomination and as such was disqualified for being chosen as a member being established and the said fact being the only ground taken for setting aside the election the consideration of the issue does not arise.

7. *Issue Nos. 4 and 5.*—The findings under issue No. 2 being that the question of eligibility of respondent No. 1 for membership being a matter within the competency of the Tribunal and the finding on issue No. 1 being that respondent No. 1 held an office of profit as contemplated by Art. 191 of the Constitution on the date of nomination and as such was disqualified for being chosen as a candidate for election at the Gunpur Scheduled Tribes Constituency, the election of respondent No. 1 as a member of the Orissa Legislative Assembly from the Gunpur Scheduled Tribes Constituency is hereby declared void.

ORDERED

The petition is accordingly allowed and the election of respondent No. 1 from the Gunpur Scheduled Tribes Constituency to the Legislative Assembly, Orissa, is hereby declared void. We further declare that the election held is wholly void. Respondent No. 1 shall pay Rs. 200/- to the petitioner towards the cost of the Election Petition.

Dictated to the shorthand writer and pronounced in open court this 22nd day of December, 1952.

(Sd.) R. K. RATHO, 22-12-52, Members.

(Sd.) D. N. DAS, Chairman,

(Sd.) G. KRISHNAMURTI, 22-12-52.

Election Tribunal, 22-12-52.

ELECTION CASE No. 1/1952

Rama Murthi Vs. Dumba Sabar

Witnesses examined:—

For Petitioner:—1. Shri Gananath Das.

2. Gobind Chandra Patnalk.

3. Rama Murthi.

For Respondent No. 1:—Dumba Sabar.

Documents marked:

For Petitioner:—Ex. 1. The Civil Budget Estimate for 1951-52 (Item No. 3 at Page 502).

Ex. 2. Sanction order for the Ashram, dated 21st April 1951.

Ex. 3. Application of Dumba Sabar dated 23rd August 1949 for appointment as an agricultural teacher.

Ex. 4. The order of appointment dated 8th October, 1949.

Ex. 5. The Joining Report dated 4th September 1949 of Dumba Sabar.

Ex. 6. Telegram dated 18th October 1951.

Ex. 6-a. Telegram dated 6th November 1951.

Ex. 6-b. Telegram dated 11th November 1951.

Ex. 7. The Order of Government dated 24th October 1951, to the Dt. Welfare Officer, Koraput.

Ex. 8. The application dated 20th October 1951 for 2 days casual leave.

Ex. 8-a. The application dated 23rd October 1951 for extension of leave.

Ex. 8-b. The application dated 6th November 1951, for a month's medical leave.

Ex. 8-c. Copy of Medical Certificate attached to Ex. 8.

Ex. 9. Application of Dumba Sabar dated 19th October 1951 for acceptance of resignation.

Ex. 9-a. Application of Dumba Sabar dated 7th November 1951 reminding for order accepting his resignation.

Ex. 10. The order dated 12th November 1951 from the Dt. Welfare Officer to Dumba Sabar.

Ex. 11. Letter dated 18th January 1952 from the Dt. Welfare Officer, Koraput, to Government appointing a substitute in place of Dumba Sabar.

Ex. 12. Order dated 12th December 1951 suspending Dumba Sabar.

For Respondent No. 1:—Nil.

(Sd.) D. N. DAS, Chairman.

Election Tribunal.

(Sd.) G. KRISHNAMURTHI,

(Sd.) R. K. RATHO,

Members, Election Tribunal.

[No. 19/16/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.